



**DISTRICT ATTORNEY'S OFFICE**  
THREE SOUTH PENN SQUARE  
PHILADELPHIA, PENNSYLVANIA 19107-3499  
215-686-8000

February 21, 2019

***Via Email***

Muir McCammon  
[67404-76223892@requests.muckrock.com](mailto:67404-76223892@requests.muckrock.com)

**Re: Response to Your Request for Information from the DAO**

Dear Ms. McCammon:

Thank you for writing the Philadelphia District Attorney's Office (DAO) to request information.<sup>1</sup> You requested:

1. Results of Richard Glazer's review of Michael Giampietro's hiring and any records or reporters generated by that review.
2. All DAO communications - including but not limited to incoming and outgoing emails, text messages, voicemails and memos - regarding the hiring of Michael Giampietro
3. All DAO communications - including but not limited to incoming and outgoing emails, text messages, voicemails and memos - regarding the Allen Robinson trial, Dorothy Johnson-Speight, Harrod E. Clay Jr., Giovanni Campbell or Guy Sciolla, including communications sent or received by Larry Krasner, Arun Prabhakaran, Jody Dodd, Movita Johnson-Harrell, Mark Burgmann, Michael Giampietro, and Benjamin Waxman.
4. All DAO communications - including but not limited to incoming and outgoing emails, text messages, voicemails, and memos - regarding the office's responses to questions from the Philadelphia Inquirer and The Philadelphia Daily about the Allen Robinson case.

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<sup>1</sup> Your request is being treated as an informal request for information, as you were advised by letter dated January 16. Written requests for records from local agencies are generally governed by Pennsylvania's Right-to-Know Law (RTKL), 65 P.S. §§ 67.101-67.3104. Pursuant to the RTKL, the DAO has established a Right-to-Know-Law Policy, which requires that the statewide standard Right-to-Know Request Form be used to submit written requests pursuant to the RTKL. The policy and form can be found at: <http://www.phila.gov/districtattorney/aboutus/Pages/RightToKnow.aspx>. Because you did not use the standard form, your request is not being treated as a formal request under the RTKL. However, the DAO refers to the RTKL for guidance in determining whether the requested information is public.

This letter responds to your requests.

### **1. Request under Item 1**

Your request under Item 1 is denied. Mr. Glazer serves as a legal advisor to the District Attorney concerning conflicts-of-interest law and ethics law more generally. Any records generated by his legal review of the hiring of Mr. Giampietro would be privileged and exempt non-public records.

First, such records would be privileged under the various attorney-confidentiality doctrines: attorney-client privilege, the work-product doctrine, and the attorney-confidentiality rule. The attorney-client privilege protects attorney-client communications made for the purpose of the legal representation. *See, e.g., Gillard v. AIG Ins. Co.*, 15 A.3d 44, 59 (Pa. 2011) (“[I]n Pennsylvania, the attorney-client privilege operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice.”). Similarly, the work-product doctrine offers broad protection for legal reports created by an attorney in the course of their representation. *See, e.g., Heavens v. Pennsylvania Dep’t of Env’tl. Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. 2013) (“The work-product doctrine offers broad protection to the mental impressions, theories, notes, strategies, research and the like created by an attorney in the course of his or her professional duties, particularly in anticipation or prevention of litigation.”). And, Rule 1.6 of the Rules of Professional Conduct states that “[a] lawyer shall not reveal information relating to representation of a client unless the client gives informed consent . . . .” It “applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.” *Id.* cmt. 3.

Second, such records would be privileged under the deliberative-process privilege, which broadly protects any record that “reflects or shows the deliberative process in which an agency engages during its decision-making.” *Carey v. Pennsylvania Dep’t of Corr.*, 61 A.3d 367, 379 (Pa. Commw. 2013).

Finally, such records would be exempt under several of the expressly enumerated exemptions of Section 708(b), including 708(b)(7) (“recommendation pertaining to . . . qualifications of an identifiable [agency employee]”); *id.* (b)(10)(i)(A) (exempting records that reveal “internal, predecisional deliberations of an agency, its members, employees . . . relating to a . . . course of action or any research, memos or other documents used in the predecisional deliberations”); *id.* (b)(17)(ii) (non-criminal investigative reports); and *id.* (b)(17)(vi)(A) (“[r]eveal the institution, progress or result of an agency investigation”).

Accordingly, the requested records are exempt privileged and non-public records. *See Bagwell v. Pennsylvania Dep’t of Educ.*, 103 A.3d 409, 420 (Pa. Commw. 2014) (“An agency lacks the discretion to provide access to a privileged record.” (citing 65 P.S. § 67.506(c))); 65 P.S. § 67.102 (defining “public record” as record not protected by privilege and not exempt under section 708).

## 2. Request under Item 2

Your request under Item 2 is granted subject to redaction of personal identifier information. *See id.* 65 P.S. § 67.708(b)(6)(i)(A)-(C) (“personal identification information”). I have located one responsive record, which is Mr. Giampietro’s offer letter (attached as Ex. A).

## 3. Request under Item 3

Your request under Item 3 is denied.<sup>2</sup> This request concerns correspondence related to the DAO’s criminal investigation and prosecution in *Commonwealth v. Robinson*. All such records are exempt criminal investigative records. The RTKL contains an exemption for any records “relating to or resulting in a criminal investigation,” 65 P.S. § 67.708(b)(16). *See, e.g., Barros v. Martin*, 92 A.3d 1243, 1250 (Pa. Commw. 2014) (“[I]f a record, on its face, relates to a criminal investigation, it is exempt under the RTKL pursuant to Section 708(b)(16)(ii).”). That exemption remains during and after any investigation is completed. *See Coley v. Philadelphia Dist. Attorney’s Office*, 77 A.3d 694, 697 (Pa. Commw. 2013) (“[C]riminal investigative records are still exempt from disclosure under the Right-to-Know Law after the investigation is completed[.]”); *Pennsylvania State Police v. Office of Open Records*, 5 A.3d 473, 479 (Pa. Commw. 2010) (en banc) (holding that criminal-investigative-record exemption of RTKL exempts records of “whether certain investigative tasks have been carried out or whether certain information was discovered”). The requested records would also fall under the expressly enumerated exemptions of 708(b)(16), including 708(b)(16)(i) (“[c]omplaints of potential criminal conduct”), *id.* (b)(16)(ii) (“correspondence”), and *id.* (b)(16)(vi)(A) (“[r]eveal the institution, progress or result of a criminal investigation”). Such records would also “include[] information made confidential by law” under a variety of legal privileges and statute. *Id.* (b)(16)(iv) (“[a] record that includes information made confidential by law or court order”); *see* Pa. R.P.C. 1.6 (“A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent . . . .”); *Commonwealth v. Vartan*, 733 A.2d 1258, 1265 (Pa. 1999) (“[T]he Court recognizes the existence of a deliberative process privilege that protects confidential deliberations of law, or policymaking that reflect opinions, recommendations or advice.”); *Gillard*, 15 A.3d at 59 (explaining attorney-client privilege). Moreover, such records would constitute confidential “investigative information” under the Criminal History Record Information Act (CHRIA), 18 Pa.C.S. §§ 9101-9106. *See id.* § 9102 (defining “investigative information” as “[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing”). Such information is exempt from disclosure under CHRIA and therefore the RTKL. *See id.* § 9106(c)(4) (“Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency . . . .”); *Coley*, 77 A.3d at 697 (explaining that records barred from disclosure by CHRIA are “by definition” not public records under RTKL (citing 65 P.S. § 67.102)).

Second, any correspondence between employees of the DAO regarding the Allen Robinson trial would in addition constitute privileged and exempt records under the attorney-client privilege, the work-product doctrine, the attorney-confidentiality rule, deliberative-process privilege, the

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<sup>2</sup> Your request as broadly written would also be insufficiently specific to satisfy the RTKL’s specificity criteria. Section 703 requires that requests “identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703.

pre-decisional deliberations exemption, and the non-criminal-investigation exemption. *See Gillard*, 15 A.3d at 59 (attorney-client privilege); *Heavens*, 65 A.3d at 1077 (work product); Pa. R.P.C. 1.6 (attorney confidentiality); *Vartan*, 733 A.2d at 1265 (deliberative-process privilege); 65 P.S. § 67.708(b)(10)(i)(A) (exempting records that reveal “internal, predecisional deliberations of an agency, its members, employees”); *id.* (b)(17) (“[c]omplaints submitted to an agency,” “[r]eveal the institution, progress or result of an agency investigation,” “investigative correspondence,” and “unwarranted invasion of privacy”). Any such records may also contain exempt personal identification information, including phone numbers and email addresses. *See* 65 P.S. § 67.708(b)(6)(i)(A)-(C).

Third, any correspondence between DAO employees and members of the public regarding the Allen Robinson trial would in addition constitute exempt non-public records under Section 708(b)(17), which exempts records of “[c]omplaints submitted to an agency,” records that “[r]eveal the institution, progress or result of an agency investigation,” “investigative correspondence,” and records the release of which would constitute an “unwarranted invasion of privacy.”

Accordingly, the requested records are exempt privileged and non-public records. *See Bagwell*, 103 A.3d at 420; 65 P.S. § 67.506(c); *id.* § 67.102.

#### **4. Request under Item 4**

Your request under Item 4 is denied.<sup>3</sup> This request seeks records of internal discussions between DAO employees about how to respond to reporter questions about the Allen Robinson case. Such records would be privileged and exempt under the attorney-client privilege, the work-product doctrine, the attorney-confidentiality rule, deliberative-process privilege, the pre-decisional deliberations exemption, and the non-criminal-investigation exemption. *See Gillard*, 15 A.3d at 59 (attorney-client privilege); *Heavens*, 65 A.3d at 1077 (work product); Pa. R.P.C. 1.6 (attorney confidentiality); *Carey*, 61 A.3d at 379 (deliberative-process privilege); 65 P.S. § 67.708(b)(10)(i)(A) (exempting records that reveal “internal, predecisional deliberations of an agency, its members, employees”); *id.* (b)(17) (“[r]eveal the institution, progress or result of an agency investigation,” “investigative correspondence,” and “unwarranted invasion of privacy”); *see also, e.g., Comm. on Oversight & Gov’t Reform, U.S. House of Rep. v. Lynch*, 156 F.Supp.3d 101, 111-12 (D.D.C. 2016) (explaining that deliberative-process privilege covers records about how to respond to press inquiries regarding law-enforcement matter); *Judicial Watch v. DHS*, 736 F.Supp.2d 202, 208 (D.D.C. 2010) (privilege covers documents “generated as part of a continuous process of . . . how to respond to on-going inquiries from the press”). Any such records may also contain exempt personal identification information, including phone numbers and email addresses. *See* 65 P.S. § 67.708(b)(6)(i)(A)-(C).

Accordingly, the requested records are exempt privileged and non-public records. *See Bagwell*, 103 A.3d at 420; 65 P.S. § 67.506(c); *id.* § 67.102.

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<sup>3</sup> Your request as broadly written would also insufficiently specific to satisfy the RTKL’s specificity criteria. Section 703 requires that requests “identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703.

Sincerely,

*/s/ Douglas Weck*

Douglas Weck  
Assistant District Attorney  
PHILADELPHIA DISTRICT ATTORNEY'S OFFICE  
Three South Penn Square  
Philadelphia, PA 19107-3499  
(215) 686-5736  
*douglas.weck@phila.gov*

# Exhibit A



**DISTRICT ATTORNEY'S OFFICE**  
THREE SOUTH PENN SQUARE  
PHILADELPHIA, PENNSYLVANIA 19107-3499  
(215) 686-8000

LAWRENCE S. KRASNER  
DISTRICT ATTORNEY

January 31, 2018

Michael Giampietro, Esquire  
[REDACTED]

Dear Mr. Giampietro:

I am pleased to extend to you an offer of employment with the Philadelphia District Attorney's Office in the position of Assistant District Attorney. This letter will confirm our offer and, by your signature below, your acceptance of employment at an annual salary of \$160,000. You will earn vacation leave at a rate of 1-10/16 day per month (20 days per year), sick leave at a rate of 1-1/4 days per month (15 days per year) and 4 administrative leave days per year (to be used in accordance with the current policy). Your appointment will be effective February 5, 2018. Please report to Deborah Hoffman at 9:00 a.m. on February 5. Should you need to change this appointment, please call Ms. Hoffman at 215-686-5783.

This offer is contingent upon satisfying the hiring requirements of the Philadelphia District Attorney's Office. Please complete the Investigative Questionnaire and Acceptance of Offer included herein and bring them with you on your first day. Within three days of your start date, you must present evidence of employment eligibility in conformance with the Immigration and Naturalization Act. Your employment in this position is exempt from Civil Service and will be considered "at-will", which means you serve at the pleasure of the District Attorney. The District Attorney's Office may sever the employment relationship at-will, with or without advance notice, at any time, for any reason.

The District Attorney's Office policies and procedures may change from time to time at the sole discretion of the District Attorney. No such modification will change the at-will nature of your employment.

The City of Philadelphia offers a generous benefits package that includes medical insurance, prescription coverage, dental and vision coverage, flexible spending accounts, paid leave, life insurance, deferred compensation and retirement benefits. You will be provide further detail on these benefits on your first day in the office. The City of Philadelphia reserves the right to change, modify or terminate any benefit, in any way, including but not limited to any retirement benefits that currently exist, any type of coverage, term of coverage, level of co-payments, level

of contributions by employees, deductibles, maximums and premium payments. You will be notified in writing of any such change.

The City of Philadelphia provides all full-time employees pension benefits under the City of Philadelphia Public Employees Retirement System ("Retirement System"), a retirement system that is tax qualified under federal tax law. Employees who are exempt from Civil Service and are first hired on or after November 14, 2014, are members of the City's hybrid Defined Contribution/Defined Benefit Plan, also known as Plan 10, immediately upon employment by the City unless, within 30 days of employment, the employee makes an irrevocable election to become a member of Plan Y, the City's Defined Benefit Plan for exempt employees hired on or after January 8, 1987. More detailed information around these options will be forwarded to you by the Board of Pensions and Retirement shortly after your appointment date. If you are being reemployed by the City and have previous credited Philadelphia government service and have not withdrawn your contributions from the City's Retirement System, you may elect to remain subject to the provisions of the Plan covering you when you separated from service with the City. The election to remain in your previous Plan must be made in writing within thirty (30) days of reemployment.

Employees of the District Attorney's Office must be domiciled within the City of Philadelphia within 180 days of hire. You must continuously maintain domicile within the City of Philadelphia for the duration of your employment.

Prior to accepting this offer, please be aware that certain employment restrictions may apply. While employed with the District Attorney's Office, all secondary or outside employment must be preapproved by your unit chief and the Chief of Staff.

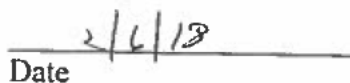
I hope that you decide to join the District Attorney's Office. I am certain that you will enjoy a rewarding career with us. If you require further assistance, please do not hesitate to contact Rachel Mitchell, Director of Human Resources, at 215-686-5784. Please acknowledge your acceptance and understanding of this appointment by signing below and returning this letter. Thank you for joining us in serving the citizens of Philadelphia.

Sincerely,



Arun S. Prabhakaran  
Chief of Staff

By my signature below, I hereby accept the appointment referenced in this offer employment.

  
Name  
Date

cc: Lawrence S. Krasner, District Attorney  
Deborah Hoffman, Assistant Director of Human Resources